

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LIABILITY & FIRE INSURANCE COMPANY	:	
	:	
Plaintiff	:	
v.	:	Civil Action No. 2:18-cv-01129-NBF
BRIMAR TRANSIT, INC.	:	
	:	
Defendant.	:	
and	:	
PITTSBURGH PUBLIC SCHOOL DISTRICT	:	
	:	
Intervenor-Defendant	:	

**NATIONAL LIABILITY & FIRE INSURANCE COMPANY'S MOTION FOR LEAVE
TO FILE *INSTANTER* REPLY BRIEF IN SUPPORT OF MOTION FOR
RECONSIDERATION OR, IN THE ALTERNATIVE, TO CERTIFY FOR
INTERLOCUTORY APPEAL**

Pursuant to LCvR 7 and Section II.B of the Court's Practices and Procedures effective February 28, 2020, Plaintiff, National Liability & Fire Insurance Company ("National"), by and through its undersigned counsel, respectfully moves the Court to permit National to file *instanter* the attached reply brief in support of its motion for the Court to reconsider its order denying National's Motion for Leave to File a Third Amended Complaint ("Motion"), or, in the alternative, grant interlocutory appeal pursuant to Fed. R. Civ. P. 54(b) and 28 U.S.C. § 1292(b). As explained in greater detail below, a reply brief is necessary to correct the Pittsburgh Public School District's ("District") material misrepresentations about the timing of National's payment of the District's defense costs, and to refute any notion that this matter is ripe for final judgment.

1. In its Opposition, the District argues the Court's Order denying National's Motion

was correct because National failed to timely and diligently seek production of the District's defense invoices. This is simply not true.

2. The District's Opposition omits the multiple attempts made by National to receive the District's defense invoices; the undisputed fact that the District – despite its Rule 26 obligations – did not produce any invoices until National issued formal Document Requests; and that the District's productions contained heavily redacted and incomplete invoices without any proof that such invoices had been paid.

3. The District's Opposition also erroneously asserts that National did not reserve its rights to recoup its defense cost payments. National advised the District in writing on no less than four separate occasions that any defense costs payments were on a full recourse basis.

4. Because these facts are directly relevant to the issue of whether National's proposed Third Amended Complaint was timely, and whether its claims for recoupment are futile, National should be permitted the opportunity to provide the Court with an accurate and complete chronology of the facts surrounding National's diligent pursuit of the District's incurred defense costs.

5. National should also be permitted to address the District's request that the Court enter final judgment on the duty to indemnify.

6. This matter is not ripe for final judgment. There has been no finding by the Court that National owes a duty to indemnify.

7. In addition, entry of final judgment would deprive National of its due process rights to present evidence and be heard on its position that the Brimar policy does not apply to the underlying lawsuit.

WHEREFORE, National Liability & Fire Insurance Company respectfully requests that

this Honorable Court grant National's Motion for Leave to File *Instanter* a Reply Brief.

Respectfully submitted,

COZEN O'CONNOR

By: /s/Wendy Enerson
WENDY N. ENERSON
(admitted pro hac vice)
123 North Wacker Drive, Suite 1800
Chicago, IL 60606
(312) 382-3162
wenerson@cozen.com

-and-

PAUL STEINMAN (ID No. 49730)
One Oxford Centre
31 Grant St., 41st Floor
Pittsburgh, PA 15219
412-620-6544
psteinman@cozen.com

*Attorneys for Plaintiff National Liability & Fire
Insurance Company*

Dated: October 6, 2021